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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/647,524

08/25/2003

Mike Saucier

82138

2268

37237 7590 02/26/2007
JUAN J. LIZARRAGA
909 POYDRES STREET, SUITE 2300
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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT

PAPER NUMBER

3635

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/647,524

Applicant(s)

SAUCIER ET AL.

Examiner

Yvonne M. Horton

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-6, 9-11, 14-16 and 18-29 is/are pending in the application.
- 4a) Of the above claim(s) 18-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-6, 9-11 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 4-6, 9-11, 14-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Newly submitted claims 26-29 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the original claims only identify a chain and sprocket mechanism. There is no mention in any of the original claims of a hydraulic cylinder and piston assembly.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 26-29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 10, 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The mechanism for raising and lowering has already been defined in claim 3 as being a "motor driving a roller chain and sprocket assembly including at least a lifting screw and a ball screw nut...driven in a vertical direction by the lifting screw shaft". However, claims 4, 10 and 15, recite yet what appears to be another identical system. It is not clear if the systems cited in claims 4, 10 and 15 are the same or different systems

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to the system previously cited in claim 3. If the systems are the same, they should be prefaced with "the" or "said". If the systems are different they should be prefaced with something denoting the system as not being the same as that of claim 3. For instance, if the system is different, it can be prefaced with "a second..."

Regarding claim 14, the specifics of the liftable frame including, "a lifting frame further comprises a front end...and the bottom deck is even with the floor.", were previously introduced in claim 9. Thus, unless the identical specifics of claim 14 are a different set of particulars related to the lifting frame, they must also be prefaced with "the" or "said". If in fact the elements of claim 14 are different, they should be notably identified as being a different set of particulars. For instance, if the lifting frame particulars are different, they can be prefaced with "a second...". Clarification and correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3,5,7,12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #1,660,275 to RUSSELL in view of JP5-125848. RUSSELL discloses the use of a concealed storage system including an encased chamber (being the pen, page 2 lines 60-64) having an opening (not labeled, page 2 lines 60-64); a support frame (1,3,4,7) fixed within the chamber (being the pen); a liftable frame (F) having a deck (8); and a lifting mechanism (27-29) for raising and lowering the system through controlled use of a suitable power source. RUSSELL discloses the basic claimed system except for the use of a top and a bottom deck, and except for explicitly detailing that his power source is specifically a motor. With regards to the power system, although RUSSELL discloses the use of a lifting mechanism that is operable by any power source, he is not specific as to the type of power used. JP5-125848; however, teaches that it is known in the art to provide a concealed storage system with top (16) and bottom (18) deck components operable through the use of a motor (the English abstract). Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of RUSSELL with the additional deck component of JP5-125848 in order to further conceal the system from external conditions.

Allowable Subject Matter

Claims 4-6 and 9-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

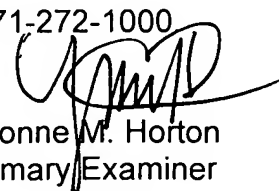
Claims 14-16 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Yvonne M. Horton
Primary Examiner
Art Unit 3635
02/19/07